

Maurer School of Law: Indiana University  
Digital Repository @ Maurer Law

Indiana Journal of Law and Social  
Equality

Volume 9 | Issue 1

Article 1

1-26-2021

## Sharing Data in the Sharing Economy: Policy Recommendations for Local Governments

Beatriz Botero Arcila  
*Harvard Law School*, [bboteroa@gmail.com](mailto:bboteroa@gmail.com)

Follow this and additional works at: <https://www.repository.law.indiana.edu/ijlse>



Part of the [Law Commons](#)

### Publication Citation

Beatriz Botero Arcila, Sharing Data in the Sharing Economy: Policy Recommendations for Local Governments, 9 Ind. J.L. & Soc. Equality 1 (2021).

This Symposium is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Journal of Law and Social Equality by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact [rvaughan@indiana.edu](mailto:rvaughan@indiana.edu).



**JEROME HALL LAW LIBRARY**

INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

## SYMPOSIUM

### Sharing Data in the Sharing Economy: Policy Recommendations for Local Governments

Beatriz Botero Arcila

#### INTRODUCTION

Firms that offer services and goods in the sharing economy gather immense amounts of data about what people do in cities. So-called sharing economy firms take advantage of urban agglomeration—the fact that in cities there are many people and things close to each other—to match supply and demand and make the provision of many urban services hyper-efficient and convenient.<sup>1</sup> This is possible through data collection and analytics. By doing so, the so-called sharing economy has also transformed life in cities—how people move and shop and often how they work and travel.

Local governments looking to crack down on illicit activities by these firms—like short-term rentals or surpassing vehicle caps—and to enhance their own decision-making processes, are starting to request user and operational data from sharing economy firms under their jurisdiction. Access to this data enhances the local government's capacity to understand the sharing economy better and enforces existing regulations that are applicable to the firms providing these services. The data would also increase the local government's planning and oversight capacities in general, allowing them to understand local social and economic phenomena better, sometimes amplified by sharing services themselves, like traffic congestion, rising housing prices, or so-called gig work.<sup>2</sup> This, in turn, allows local governments to make better policies to plan for safer and friendlier streets, improve mobility, improve worker safety, and, generally, improve quality of life in cities.<sup>3</sup> As noted in a 2019 *Wired* article titled “Airbnb Starts to Play Nice with Cities,” some main sharing firms, like Airbnb, also hand in that data voluntarily.<sup>4</sup> As the article put it, “[t]he short-term rental startup has settled lawsuits with Boston and Miami Beach, agreeing to turn over data officials say they need to police the industry.”<sup>5</sup>

However, data sharing between local governments and sharing economy firms raises legitimate privacy concerns. Much of the data collected by sharing firms

---

<sup>1</sup> See Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 YALE L. & POL'Y REV. 215, 218–19, 227 (2016); see also David Rauch & David Schleicher, *Like Uber but for Local Government Law: The Future of Local Regulation of the Sharing Economy*, 76 OHIO ST. L.J. 901, 940–41 (2015) (noting that sharing economy firms improve the manner in which urban agglomeration operates, and “connect a city's myriad buyers with its myriad sellers.”).

<sup>2</sup> I use gig work to refer to the kind of part-time work that is facilitated by platforms.

<sup>3</sup> See NACTO and IMLA *Guidelines for Managing Mobility Data*, NACTO, <https://nacto.org/managingmobilitydata/> (last visited Oct. 19, 2020).

<sup>4</sup> Paris Martineau, *Airbnb Starts to Play Nice with Cities*, WIRED (Aug. 3, 2019, 7:00 AM), <https://www.wired.com/story/airbnb-starts-play-nice-cities/>.

<sup>5</sup> *Id.*

can be considered sensitive and intimate personal information. These ordinances are often challenged in court on privacy grounds as violating the Fourth Amendment of the U.S. Constitution, which secures persons from unreasonable searches and seizures of property by the government; Section 2702 of the Stored Communications Act (SCA), which establishes that electronic communications services and providers of remote computing services “shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service . . . to any governmental entity;”<sup>6</sup> and state laws that also grant privacy rights. In particular, when challenged, the ordinances are argued to be warrantless searches and seizures of sensitive and proprietary commercial and personal information.<sup>7</sup> There are real concerns about illegal harms caused by purposes that go beyond regulating the sharing economy or planning the city’s infrastructure, including the potential for data breaches and that shared data can be used by local governments for criminal law enforcement.

This Article presents some main cases of data-sharing agreements, identifies best practices and key privacy concerns, and makes some recommendations for how local governments could address them. The recommendations highlight some issues that local governments should take into account when they enact data-sharing ordinances or issue subpoenas. Most importantly, they should encourage local government agencies to be aware of privacy concerns. Finally, this Article hopes to convey that data sharing in the context of the sharing economy is a positive phenomenon. It is a step towards legally understanding and treating at least some of the vast amounts of data being collected in the digital networked economy as a public resource and that privacy is an important aspect, rather than a limit, of thinking of some forms of data as a public good.

## I. THREE SETTLEMENTS WITH AIRBNB

Data sharing in the home-sharing industry raises important privacy concerns because the data requested often involves personal information about the hosts renting their residences through the platforms. Data sharing, however, encourages cities to enforce existing legal limits on short-term rentals that are too often ignored by renters and the platforms themselves.<sup>8</sup> These limits intend to address rising housing prices and protect the affordability of local housing stocks.<sup>9</sup> Indeed, home sharing is perceived to affect the affordability of housing when it becomes a

---

<sup>6</sup> 18 U.S.C. § 2702(a)(3), (c)(1) (2018); *see also id.* § 2703(c) (establishing when government entities can require electronic communication or remote service providers to disclose subscriber or customer information).

<sup>7</sup> *See infra* text accompanying notes 24, 43 (noting that ordinances in New York City and Boston have been challenged in court as violations of the Fourth Amendment, SCA, and state laws).

<sup>8</sup> *See, e.g.,* Zoe Greenberg, *New York City Looks to Crack Down on Airbnb amid Housing Crisis*, N.Y. TIMES (July 18, 2018), <https://www.nytimes.com/2018/07/18/nyregion/new-york-city-airbnb-crackdown.html?module=inline> (noting that a 2018 report from New York City’s comptroller office indicated that New Yorkers paid an additional \$616 million in rent in 2016, as “Airbnb was exacerbating the city’s affordable housing crisis”); *see also* Zeninor Enwemeka, *Boston City Council Approves Ordinances to Regulate Short-Term Rentals*, WBUR (June 13, 2018), <https://www.wbur.org/bostonmix/2018/06/13/airbnb-boston-council-proposal-vote>.

<sup>9</sup> Enwemeka, *supra* note 8.

principal commercial activity for hosts or when it is used by large-scale commercial landlords to rent out entire residences or buildings on the platforms. These activities keep residences off the permanent rental market and contribute to rising rents.<sup>10</sup> Data sharing thus offers a promising alternative for local governments wishing to control these activities as it increases their oversight and enforcement capacities. This Section presents the data-sharing ordinances and agreements referred to above—New York City, Boston, and Miami—and presents the privacy arguments that were raised against them.

### A. New York City

Under New York state law, short-term rentals for less than thirty days are illegal in most buildings unless the permanent tenant is in the apartment at the same time.<sup>11</sup> Local Law No. 146 of 2018, issued by New York City's Committee on Housing and Buildings, sought to facilitate the enforcing of this provision by requiring "online short-term rental platforms that provide booking services for a fee to provide information about those transactions to the Mayor's Office of Special Enforcement" (OSE).<sup>12</sup> The information requested included the following: the address of the short-term rental; the name and address of the host; the URL of the listing; the type of rental (the whole unit or part of it); the number of days the unit was rented; and the fees collected by the platform.<sup>13</sup> The rules also established that booking services that did not submit the reports would be liable for a penalty no greater than \$1,500 or "the total fees collected during the preceding year by the booking service for transactions related to the listing."<sup>14</sup>

Airbnb and HomeAway, the two main home-sharing platforms, challenged the law, and various privacy advocacy groups supported the challenge. The platforms argued that the ordinances violated the Fourth Amendment, the Stored Communications Act, and Article One of the New York State Constitution.<sup>15</sup> Additionally, the platforms argued that New York City had other tools, such as subpoenas, warrants, and other legal processes on Airbnb, such as host information, enforcement measures, and regulations.<sup>16</sup> The Electronic Frontier Foundation filed an amicus brief arguing that the law was unconstitutional and preempted because the information being requested could reveal patterns of home life, vacations, and

---

<sup>10</sup> See Greenberg, *supra* note 8.

<sup>11</sup> *Id.*

<sup>12</sup> Regulation of Short-Term Residential Rentals, N.Y.C. COUNCIL (July 10, 2018, 11:05 PM), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3522047&GUID=BD0FAC13-E6DD-4C55-8376-CD82F1093402&Options=&Search=%3b>.

<sup>13</sup> N.Y.C., N.Y., ADMIN. CODE § 26-2102(1)–(6) (LEXIS through Oct. 7, 2020).

<sup>14</sup> N.Y.C., N.Y., ADMIN. CODE § 26-2104 (LEXIS through Oct. 7, 2020).

<sup>15</sup> Complaint for Declaratory and Injunctive Relief at 5–6, *Airbnb v. City of N.Y.*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019) (No. 1:18-cv-07712).

<sup>16</sup> *Id.* at 17.

other private life details.<sup>17</sup> In a blog post, an Electronic Frontier Foundation spokesperson emphasized that “[i]t’s essential that sensitive information is not disclosed to the government without any allegation of wrongdoing.”<sup>18</sup> The Center for Democracy and Technology supported the Electronic Frontier Foundation and emphasized that most of the hosts whose data would have to be reported are not commercial entities, but rather individuals renting out their home, which is a “traditional bedrock of Fourth Amendment protections.”<sup>19</sup>

In January 2019, a district judge “granted Airbnb and HomeAway’s request for a preliminary injunction, stopping the law from going into effect.”<sup>20</sup> The court found that the law was likely to abridge the platforms’ Fourth Amendment rights to the privacy of their business records.<sup>21</sup> In its reasoning, the court relied strongly on *City of Los Angeles v. Patel*, a 2015 Supreme Court decision in which the Court considered the constitutionality of a Los Angeles ordinance that required hotel operators to record, maintain, and eventually make available information for inspection by the police on demand.<sup>22</sup> In *Patel*, the Supreme Court held the ordinance invalid under the Fourth Amendment because it lacked a mechanism for pre-compliance review and classified governmental inspection of commercial records as a “search” encompassed by the Fourth Amendment.<sup>23</sup> The district court examining the data-sharing ordinance found that it also requested information about their customers and business operations, which was likely to be a violation of the platforms’ Fourth Amendment rights.

The Court rejected the City’s argument that the home-sharing platforms did not have a protected privacy interest because the data requested related to the users of the platforms, not to the platforms themselves. Quoting the Ninth Circuit, which had first decided *Patel*, the Court said that the data requested was protected from unreasonable seizures because the platforms had a possessory and ownership interest over the data, which were part of its business records: it was in its competitive interest to keep that information confidential from competitors, and it was in its reputational interest to keep that information private as it assures better relations with its customers.<sup>24</sup>

---

<sup>17</sup> Rebecca Jeschke, *New York City Home-Sharing Ordinance Could Create Privacy Nightmare*, ELECTRONIC FRONTIER FOUND. (Oct. 3, 2018), <https://www EFF.ORG/deeplinks/2018/10/new-york-city-home-sharing-ordinance-could-create-privacy-nightmare>.

<sup>18</sup> *Id.*

<sup>19</sup> Mana Azarmi, *Airbnb and HomeAway Challenge NYC’s Mandatory Data Sharing Law*, CTR. FOR DEMOCRACY & TECH. (Oct. 9, 2018), <https://cdt.org/blog/airbnb-and-homeaway-challenge-nycs-mandatory-data-sharing-law/>.

<sup>20</sup> Benjamin Weiser & J. David Goodman, *Judge Blocks New York City Law Aimed at Curbing Airbnb Rentals*, N.Y. TIMES (Jan. 3, 2019), <https://www.nytimes.com/2019/01/03/nyregion/nyc-airbnb-rentals.html>.

<sup>21</sup> *See Airbnb, Inc. v. City of N.Y.*, 373 F. Supp. 3d 467, 495 (S.D.N.Y. 2019).

<sup>22</sup> 576 U.S. 409, 413 (2015).

<sup>23</sup> *See Airbnb, Inc.*, 373 F. Supp. 3d at 419–20.

<sup>24</sup> [T]he Fourth Amendment protects a hotel from unreasonable seizures of records that it prepares and maintains as to its guests:

The Court also rejected the City's argument that it had the power to impose reporting requirements on industries that impose a risk to the general welfare.<sup>25</sup> This exception to the Fourth Amendment, known as the closely regulated industries exception, establishes that closely regulated industries have diminished privacy interests in their records, like mining, firearms, liquor, and junkyards.<sup>26</sup> The court, also following *Patel*, indicated that the peer-to-peer housing market was not an industry that posed the type of dangerous activities that justified such close regulation.<sup>27</sup> Finally, the district court found that the lawsuit did not meet the requirements of reasonableness of subpoenas under the Fourth Amendment. Although the law did not require physical entry into the quarters of the sharing firms and did not give the OSE discretion as to what information the platforms were required to hand in, subpoenas must have a limited scope, and "the scale of the production that the Ordinance compels each booking service to make is breathtaking."<sup>28</sup> Thus, the court also dismissed the City's argument that the existing Fourth Amendment standards (building cases through administrative leads and then issuing subpoenas targeted to suspected listings) made enforcement efforts in the home-sharing industry particularly hard.<sup>29</sup>

However, the court did establish that the City possessed other tools to gather evidence of violation of home-sharing laws, such as subpoenas.<sup>30</sup> Only a month after the decision, the City filed five subpoenas against Airbnb and HomeAway.<sup>31</sup> According to the press, the subpoena asked for the data of roughly 20,000 hosts identified by the City who might have violated the local home-sharing rules.<sup>32</sup> In May of that same year, the City and Airbnb reached an agreement on one of the subpoenas: Airbnb would give to the City partially anonymized host data and "data

---

The business records covered by [the challenged ordinance] are the hotel's private property, and the hotel therefore has both a possessory and an ownership interest in the records. . . . [This] is also the source of its expectation of privacy in the records.

Airbnb and HomeAway have a similar privacy interest in the data that New York seeks as to their users . . . . Like a hotel, a home-sharing platform has at least two very good reasons to keep host and guest information private, whether as to these users' identities, contact information, usage patterns, and payment practices. One is competitive: Keeping such data confidential keeps such information from rivals (whether competing platforms or hotels) who might exploit it. The other involves customer relations: Keeping such data private assuredly promotes better relations with, and retention of, a platform's users.

*Id.* at 484 (second alteration in original) (citation omitted).

<sup>25</sup> *Id.* at 500–01.

<sup>26</sup> *Id.* at 485.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 490.

<sup>29</sup> In its Fourth Amendment jurisprudence, the Supreme Court, in fact, has repeatedly disdained justifications like that offered by the City. As the Court has repeatedly emphasized, while the Fourth Amendment's reasonableness command must adapt to changing times and technology, the test of reasonableness is not whether an investigative practice maximizes law enforcement efficacy. Other factors, including the extent of the intrusion on protected privacy interests, weigh heavily, often decisively, in the balance.

*Id.* at 492 (citation omitted).

<sup>30</sup> *Id.* at 500.

<sup>31</sup> Paris Martineau, *Airbnb and New York City Reach a Truce on Home-Sharing Data*, WIRED (May 24, 2019, 7:00 AM), <https://www.wired.com/story/airbnb-new-york-city-reach-truce-on-home-sharing-data/>.

<sup>32</sup> Sara O'Brien, *Airbnb Subpoenaed by New York City for Data on Listings*, CNN BUS. (Feb. 19, 2019, 7:00 PM), <https://www.cnn.com/2019/02/19/tech/airbnb-subpoena-new-york-city/index.html>.

on every listing rented through [the] platform between January 1, 2018, and February 18, 2019, that could . . . potentially violate[] New York’s short-term rental laws.”<sup>33</sup> Two days after the agreement was signed, another judge ordered Airbnb to comply with the information requested by OSE, which included providing personal information of guests and hosts for use in an investigation of illegal short-term rentals.<sup>34</sup>

### *B. Boston*

The City of Boston enacted an ordinance on June 18, 2018, that regulated short-term rentals.<sup>35</sup> Under the ordinance, only owners of the residences who also use the dwelling as a principal residence can list their residences on short-rental services. Owners wanting to rent out their residences in whole or in part must register with the City and pay annual fees. The ordinance also created a requirement for platforms to share, on a monthly basis, an electronic report of the listings maintained, authorized, facilitated, or advertised by the platform within the City of Boston. The report had to include “where the listings [were] located, whether the listing [was] for a room or a whole unit, and . . . the number of nights each unit was reported as occupied during the applicable reporting period.”<sup>36</sup>

As in the New York City case, Airbnb and HomeAway objected to the bill when it was proposed. An Airbnb spokesperson said that the ordinance created “a system that violates the privacy of our hosts, and prevents Boston families from making much-needed extra income,” while a HomeAway spokesperson said the vote would “have dangerous consequences for Boston’s travel and tourism.”<sup>37</sup> Once the law was enacted, Airbnb filed a complaint for declaratory and injunctive relief against the City of Boston arguing that “requiring Airbnb to turn over personal, non-public information about its hosts . . . breaches critical privacy protections.”<sup>38</sup> The complaint argued that the ordinance was compelling platforms to disclose confidential user information to the City without legal process and imposed significant civil liability on the platforms for publishing third-party listings that advertise allegedly unlawful short-term rentals, violating the § 2701 of the SCA, the Fourth Amendment of the U.S. Constitution, and the Massachusetts Declaration of Rights.<sup>39</sup>

In May 2019, a district judge granted an injunction and temporarily blocked the part of the data sharing requirement that requested information on how many

---

<sup>33</sup> Martineau, *supra* note 31.

<sup>34</sup> *Id.*

<sup>35</sup> Complaint for Declaratory and Injunctive Relief at 18, *Airbnb, Inc. v. City of N.Y.*, 373 F. Supp. 3d 467 (S.D.N.Y. 2019) (No. 1:18-cv-07712).

<sup>36</sup> BOSTON, MASS., MUN. CODE § 9-14.11 (2019).

<sup>37</sup> Enwemeka, *supra* note 8.

<sup>38</sup> Complaint of Airbnb, Inc. for Declaratory and Injunctive Relief at 4, *Airbnb, Inc. v. City of Bos.*, 386 F. Supp. 3d 113 (D. Mass. 2019) (No. 1:18-cv-12358).

<sup>39</sup> *Id.* at 2.

nights each month the Boston rentals were occupied.<sup>40</sup> The district judge upheld the requirement that Airbnb disclose the listing's location and type of rental unit because the court reasoned that under the SCA and Fourth Amendment doctrine there is no reasonable expectation of privacy on information already exposed to the public.<sup>41</sup> However, the court did find that Airbnb would be irreparably harmed if forced to disclose information that is not disclosed to the public, because this amounted to private business information.<sup>42</sup> Thus, it found:

Airbnb has a reasonable expectation of privacy in the nonpublic usage data for its listings—especially when paired with additional information such as the location of the unit—and that the City cannot lawfully require disclosure of that information without the protections guaranteed by the Fourth Amendment (protections which are not accounted for in the Ordinance). . . . Airbnb would be irreparably harmed by having to comply with an unconstitutional requirement that it disclose private business information . . . .<sup>43</sup>

Though Airbnb appealed, in August 2019, the City and Airbnb reached an agreement in which Airbnb committed to provide the city with almost everything the judge upheld: the listing ID, the registration number, the host ID, the type of listing, and the zip code.<sup>44</sup> Airbnb also committed to not permit listings that do not provide a registration number, which will also be displayed in the listing visible to the public, to lead a campaign urging hosts to register, and to deactivate listings that fail to enter a valid registration number by December 2019.<sup>45</sup> The City can notify the platform of ineligible listings under the ordinance and expect compliance within thirty days by either the host, who will have to complete the registration process, or by Airbnb, who will be required to remove the listing from its platform.<sup>46</sup> Finally, the settlement also includes provisions requiring the City to take measures to ensure that other home-sharing platforms are subjected to similar conditions.<sup>47</sup>

### *C. Miami Beach*

It has been illegal to rent short-term properties in Miami Beach without a business tax receipt (BTR), a document issued by the city to a property owner who

---

<sup>40</sup> *Airbnb, Inc. v. City of Bos.*, 386 F. Supp. 3d 113, 125 (D. Mass 2019).

<sup>41</sup> *Id.* at 124.

<sup>42</sup> *Id.* at 125.

<sup>43</sup> *Id.* (citation omitted).

<sup>44</sup> Settlement Agreement and Mutual Release at 5, *Airbnb, Inc. v. Boston*, 386 F. Supp. 3d 113 (D. Mass. 2019) (Case 1:18-cv-12358-LTS) [hereinafter Settlement Agreement].

<sup>45</sup> *Id.* at 3–4.

<sup>46</sup> Mayor's Office, *City of Boston, Airbnb Reach Agreement to Strengthen Short-Term Rental Registry, Remove Illegal Units*, CITY BOS. (Aug. 29, 2019), <https://www.boston.gov/news/city-boston-airbnb-reach-agreement-strengthen-short-term-rental-registry-remove-illegal-units>.

<sup>47</sup> Settlement Agreement, *supra* note 44, at 8; *see* Martineau, *supra* note 4.



wants to short-term rent her residence, since 2016.<sup>48</sup> The BTR must be “provide[d] and conspicuously display[ed]” by property owners “in every advertisement or listing . . . with the rental of the residential property.”<sup>49</sup> To obtain it, the owner must show the City that specified conditions have been met, such as compliance with the City’s land development regulations—short-term rentals are not allowed in all neighborhoods—compliance with accessibility standards, and authorization from a condominium administration if applicable.<sup>50</sup> In February 2019, the City amended its ordinances to impose a duty on the home-sharing platforms to list only properties that had a City-issued BTR, to post a notice on their websites on the obligations of hosts to have such a permit, and to display the property owner’s city-issued tax receipt number in each listing.<sup>51</sup> Section 102-387 also created an exception for platform liability: the City would not seek to impose penalties on platforms if they, in addition to asking hosts for their BTRs, voluntarily incorporated geofencing to automatically block the listing of properties located in areas where short-term rentals are illegal.<sup>52</sup>

In January 2019, Airbnb filed a lawsuit arguing that, as an intermediary, it was not responsible for the content its users uploaded to the website.<sup>53</sup> In August, the City and Airbnb settled the lawsuit; the City agreed not to enforce or seek penalties under the Ordinance for bookings made prior to the time the new ordinance came into force and that had a check-in date beginning before December 31, 2019.<sup>54</sup> Airbnb committed to comply with the Ordinance, geofence as set forth in the Ordinance, and send the information regarding the geofencing protocol to the city.<sup>55</sup>

## II. SHARING DATA WITH MOBILITY COMPANIES

Urban mobility is an industry where services and products with a sharing-oriented business model are very popular. Unsurprisingly, the idea that some of the information these services gather should be a public good has been proposed by mobility experts for a few years now.<sup>56</sup> This Part presents some of the recommendations and guidelines that have been developed by the National Association of City Transportation Officials (NACTO) and the International

<sup>48</sup> See Vacation Short Term Rentals, CITY MIAMI BEACH, <https://www.miamibeachfl.gov/business/vacation-short-term-rentals/> (last visited Jan. 23, 2021).

<sup>49</sup> MIAMI BEACH, FLA., CODE OF ORDINANCES § 102-386(c) (2020).

<sup>50</sup> *Id.* § 102-386(a).

<sup>51</sup> *Id.* § 102-387(a).

<sup>52</sup> *Id.* § 102-387(c); see *id.* § 102-356.

<sup>53</sup> TRD Staff, *Airbnb Sues Miami Beach over New Rules to Regulate Short-Term Rental Listings*, REAL DEAL (Jan. 5, 2019, 12:15 PM), <https://therealdeal.com/miami/2019/01/05/airbnb-sues-miami-beach-over-new-ordinance-regulating-short-term-rentals/>.

<sup>54</sup> Stipulation of Dismissal and Settlement at 3, *Airbnb, Inc. v. City of Miami Beach*, No. 1:19-cv-20045-RNS (S.D. Fla. Aug. 1, 2019).

<sup>55</sup> *Id.*

<sup>56</sup> See, e.g., NAT’L LEAGUE OF CITIES, CITIES, THE SHARING ECONOMY AND WHAT’S NEXT 7 (2015).

Municipal Lawyers Association (IMLA) and briefly presents two cases of data-sharing at the municipal level with mobility services.

*A. Mobility Data as a Public Good: The NACTO and IMPLA Principles*

In 2019, NACTO and the IMLA published a document entitled *Managing Mobility Data*. The document starts by stating the following:

Managing city streets in the digital age requires leveraging and managing the unprecedented amount of data generated by new transportation technologies. The data streams contain vital information for proactive planning and policymaking, and essential regulation and oversight. The data generated by private mobility service companies operating in the public right-of-way must be available to municipalities in order to ensure planners and policy makers have the tools they need to build sustainable, equitable, accessible, and vibrant cities.<sup>57</sup>

The document defines “mobility data” as “information generated by activity, events, or transactions using digitally-enabled mobility devices or services,” and it encompasses speed of travel, who is making the trip, time and location of trips, etc.<sup>58</sup> The document proposes four principles for managing mobility data: First, treating data from private vendors as a public good to which cities have access.<sup>59</sup> Second, treating mobility data the same as personal identifiable information (PII), in accordance with PII policies and practices.<sup>60</sup> Third, being “clear about what they are aiming to evaluate when requiring data from private companies.”<sup>61</sup> Fourth, “prioritize[ing] open data standards and open formats in procurement and development decisions . . . , [as they] allow cities to own, transform, and share data without restrictions.”<sup>62</sup>

<sup>57</sup> NAT’L ASS’N OF CITY TRANSP. OFFICIALS & INT’L MUN. LAWYERS ASS’N, *MANAGING MOBILITY DATA 1* (2019) [hereinafter *NACTO REPORT 2019*], [https://nacto.org/wp-content/uploads/2019/05/NACTO\\_IMLA\\_Managing-Mobility-Data.pdf](https://nacto.org/wp-content/uploads/2019/05/NACTO_IMLA_Managing-Mobility-Data.pdf).

<sup>58</sup> *Id.* at 2.

<sup>59</sup> *Id.* at 3.

<sup>60</sup> *Id.* The U.S. Government defines PII as “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” *Rules and Policies - Protecting PII - Privacy Act*, U.S. GEN. SERVS. ADMIN., <https://www.gsa.gov/reference/gsa-privacy-program/rules-and-policies-protecting-pii-privacy-act> (last updated Jan. 12, 2020); see also *NACTO REPORT 2019*, *supra* note 57, at 5.

<sup>61</sup> *NACTO REPORT 2019*, *supra* note 57, at 10.

<sup>62</sup> *Id.* at 3.

*B. Data Sharing Rules of New York City's Taxi and Limousine Commission for For-Hire Vehicles*

Since 2007, New York City's Taxi and Limousine Commission (TLC) has required that every taxi in the city takes credit card payments.<sup>63</sup> The readers have GPS trackers that provide the agency with insights about mobility and transportation in the city.<sup>64</sup> New York City's transportation department has used this data to evaluate and improve traffic and to create new pedestrian space in the city, like the one created in Times Square in 2010.<sup>65</sup>

In 2014, TLC issued rules requiring ridesharing (or for-hire vehicles, as under local law) companies to report pickup time and location of each trip, the license number of the driver, and the license number of the vehicle performing the trips.<sup>66</sup> In December 2016, amidst local, public concern over Uber drivers working themselves to exhaustion, TLC proposed to amend the existing rules on fatigue driving for for-hire vehicle drivers.<sup>67</sup> The implementation of the proposed driver fatigue rules was based on the calculation of trip times, which required that all for-hire vehicle bases transmit to TLC drop-off time and location, in addition to the pickup time and location that was already required.<sup>68</sup> TLC also required information on when trips were shared.<sup>69</sup> This information would allow TLC to confirm the accuracy of the for-hire vehicles' records by considering distance traveled during and between trips, routes, and traffic.<sup>70</sup> According to the rules presentation document, accurate drop-off information would also ensure that these rules were applied consistently.<sup>71</sup> The information would broadly assist TLC in other enforcement actions, such as investigating passenger and pedestrian complaints and generally increasing the transparency and accountability of the for-hire vehicle industry.<sup>72</sup> Around the same time, Uber and Lyft were pushing state regulators all over the United States to pass legislation preempting local

<sup>63</sup> Aarian Marshall, *NYC Now Knows More than Ever About Your Uber and Lyft Trips*, WIRED (Jan. 31, 2019, 6:18 PM), <https://www.wired.com/story/nyc-uber-lyft-ride-hail-data/>.

<sup>64</sup> *See id.*

<sup>65</sup> *See* Janette Sadik-Khan, Opinion, *Uber's Dishonest Data Dance: They Refuse to Make Available Information that the City Needs to Do Strategic Transportation Planning*, N.Y. DAILY NEWS (Feb. 02, 2017, 5:00 AM), <https://www.nydailynews.com/opinion/uber-dishonest-data-dance-article-1.2961487>.

<sup>66</sup> *See* N.Y.C. Taxi and Limousine Comm'n, *What Makes a City Street Smart?*, MEDIUM: N.Y.C. TAXI & LIMOUSINE COMMISSION (Jan. 31, 2019), <https://medium.com/@NYCTL/what-makes-a-city-street-smart-23496d92f60d>.

<sup>67</sup> *See* Ginia Bellafante, *A Driver's Suicide Reveals the Dark Side of the Gig Economy*, N.Y. TIMES (Feb. 6, 2018), <https://www.nytimes.com/2018/02/06/nyregion/livery-driver-taxi-uber.html>.

<sup>68</sup> N.Y.C. TAXI & LIMOUSINE COMM'N, NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO COMMENT ON PROPOSED RULES (2016), [https://www1.nyc.gov/assets/tlc/downloads/pdf/proposed\\_rule\\_rev\\_driver\\_fatigue\\_1\\_5\\_17.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/proposed_rule_rev_driver_fatigue_1_5_17.pdf).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

governments to regulate them.<sup>73</sup> New York City, however, retained the power to regulate for-hire vehicles.<sup>74</sup>

The ride-sharing companies and privacy advocacy organizations raised concerns. These concerns were not raised again after the TLC clarified that it did not need exact coordinates regarding location data and that the nearest intersection would suffice to meet the data-reporting requirements.<sup>75</sup> Based on the data collected, New York City's Council passed legislation in 2018 to temporarily cap the amount of ride-hailing cars while the city developed a long-term policy for managing congestion from for-hire vehicles.<sup>76</sup> In December 2018, it also passed legislation with a minimum pay-trip payment formula after determining that 96% of all app drivers were making less than the equivalent of minimum wage.<sup>77</sup> The app driver pay protections included additional data-reporting requirements on the largest for-hire vehicles to "facilitate [data] audits and inform future policymaking."<sup>78</sup> The new information requested included driver pay, passengers fares, driver working time, and trip distance.<sup>79</sup> Although Lyft and Juno filed a lawsuit in January 2019 to block the implementation of the law, none of their challenges were on privacy grounds.<sup>80</sup>

Today, the TLC collects information on the location of pick-up and drop-off of each trip, the route taken, whether the trip touches on congestion zones, date and time of pick-ups and drop-offs, date and time of the driver's logging in and off the app, driver payment, passenger fare and deductions from driver payment, and vehicle and driver identifier, among others.<sup>81</sup> It does not, however, receive passenger information. The TLC states that it "require[s] only . . . data necessary to understand traffic patterns, working conditions, vehicle efficiency, service availability, and other important information."<sup>82</sup> The TLC also strips the data of identifying information and makes it available to the public to "help . . . business

<sup>73</sup> NAT'L EMP'T LAW PROJECT & P'SHIP FOR WORKING FAMILIES, *UBER STATE INTERFERENCE: HOW TRANSPORTATION NETWORK COMPANIES BUY, BULLY, AND BAMBOOZLE THEIR WAY TO DEREGULATION* (2018), <https://s27147.pcdn.co/wp-content/uploads/Uber-State-Interference-How-Transportation-Network-Companies-Buy-Bully-Bamboozle-Their-Way-to-Deregulation.pdf>.

<sup>74</sup> *See For-Hire Vehicle*, N.Y.C. TAXI & LIMOUSINE COMMISSION, <https://www1.nyc.gov/site/tlc/businesses/for-hire-vehicles.page> (last visited Oct. 18, 2020).

<sup>75</sup> Aarian Marshall, *The Secret Uber Data that Could Fix Your Commute*, WIRED (Feb. 3, 2017, 10:00 AM), <https://www.wired.com/2017/02/ubers-coughing-data-nyc-fix-commute/>.

<sup>76</sup> Laura Bliss, *New York City Just Changed the Uber Game*, CITYLAB (Aug. 8, 2018, 4:32 PM), <https://www.citylab.com/transportation/2018/08/new-york-city-moves-to-cap-uber-and-lyft/566924/>;

<sup>77</sup> N.Y.C. Taxi & Limousine Comm'n, *End of Tenure Remarks from Meera Joshi, the Outgoing Chair of the New York City Taxi and Limousine Commission, at Crain's New York Breakfast, January 8, 2019.*, MEDIUM: N.Y.C. TAXI & LIMOUSINE COMMISSION (Jan. 25, 2019), <https://medium.com/@NYCTL/End-of-tenure-remarks-from-meera-joshi-the-outgoing-chair-of-the-new-york-city-taxi-and-limousine-a414eb3bd7f5>.

<sup>78</sup> N.Y.C. TAXI & LIMOUSINE COMM'N, NOTICE OF PROMULGATION 5 (2018), [https://www1.nyc.gov/assets/tlc/downloads/pdf/driver\\_income\\_rules\\_12\\_04\\_2018.pdf](https://www1.nyc.gov/assets/tlc/downloads/pdf/driver_income_rules_12_04_2018.pdf).

<sup>79</sup> *Id.*

<sup>80</sup> *See Tri-City, LLC v. N.Y.C. Taxi & Limousine Comm'n*, No. 151037 (N.Y. Sup. Ct. Mar. 18, 2019) (order denying preliminary injunction).

<sup>81</sup> Marshall, *supra* note 75.

<sup>82</sup> N.Y.C. Taxi & Limousine Comm'n, *supra* note 66.

opportunities from saturated markets, encourage competition, and help investors follow trends . . . .”<sup>83</sup>

*C. Los Angeles Department of Transportation’s Universal Scooter Data Collection Standard*

Los Angeles Department of Transportation’s (LADOT) Shared Mobility Device Pilot Program provides another example of a data sharing ordinance aimed at improving local welfare.<sup>84</sup> The program, launched in the summer of 2018, requires companies operating Dockless On-Demand Mobility products and services (such as e-scooters, bicycles, and cars) to receive a permit from the City.<sup>85</sup> One of the requirements to obtain the permit is to send LADOT real-time data about where the scooters or bikes are, when they are in use, and where they are headed, tied to unique devices identifiers (“UDIDs”).<sup>86</sup> The information is shared according to open source Mobility Data Specification (MDS), which has by now been adopted by at least three more cities.<sup>87</sup> LADOT describes MDS as a key piece of its digital infrastructure which allows it to see whether companies are complying with the rules that limit the number of vehicles, make sure that they are being made available to lower income residents, plan infrastructure using insights from real trip route traces (for example by investing in bike lanes where they are needed most), ensure that fleets are sufficiently maintained, and plan transportation services in complementary ways.<sup>88</sup>

Eight out of nine companies operating scooters have complied.<sup>89</sup> However, Uber, which operates a scooter service called Jump, stated that sharing the data LADOT is requesting, especially in real time, threatens its customers’ expectations of privacy and security.<sup>90</sup> Privacy advocacy groups like the Center for Democracy

---

<sup>83</sup> *Id.*

<sup>84</sup> The City of Los Angeles (“City”) has seen significant growth in new mobility products and services. Acceleration of shared mobility, artificial intelligence and machine learning, electrification and solar power, GPS and big data combined to change the mobility landscape more than in the previous 40 years. The City is taking a proactive approach to integrate these technologies into the fabric of its transportation system. . . . This allows the City the tools to make informed, data-driven decisions to ensure transportation options that are safe and deliver on the City’s goal of socioeconomic and racial equity.

LADOT, DOCKLESS ON-DEMAND PERSONAL MOBILITY CONDITIONAL PERMIT 18 (Oct. 1, 2018), <https://ladot.lacity.org/sites/g/files/wph266/f/LADOTDocklessCP.pdf> [<https://web.archive.org/web/20181123012820/https://ladot.lacity.org/sites/g/files/wph266/f/LADOTDocklessCP.pdf>].

<sup>85</sup> See Press Release, LADOT, LADOT Expands Dockless Scooter and Bicycle Program to Be Largest in Country (Mar. 22, 2019), <https://ladot.lacity.org/sites/default/files/press-releases/press-release-ladot-expands-dockless-scooter-and-bicycle-program-to-be-largest-in-country.pdf>.

<sup>86</sup> Open Mobility Found., *Mobility Data Specification*, GITHUB, <https://github.com/CityOfLosAngeles/mobility-data-specification> (last visited Nov. 25, 2019).

<sup>87</sup> *Id.*

<sup>88</sup> Joseph Cox, *Scooter Companies Split on Giving Real-Time Location Data to Los Angeles*, VICE (Mar. 19, 2019 8:43 AM), [https://www.vice.com/en\\_us/article/yw8j5x/scooter-companies-location-data-los-angeles-uber-lyft-bird-lime-permits](https://www.vice.com/en_us/article/yw8j5x/scooter-companies-location-data-los-angeles-uber-lyft-bird-lime-permits); Open Mobility Found., *supra* note 86.

<sup>89</sup> See Cox, *supra* note 88.

<sup>90</sup> Sasha Lekach, *Privacy Groups Actually Side with Uber in Scooter Data Fight*, MASHABLE (Oct. 29, 2019), <https://mashable.com/article/uber-jump-scooter-la-data-policy/>.

and Technology, the Electronic Frontier Foundation, and the New America's Open Technology Institute (OTI), supported Uber.<sup>91</sup> The Center for Democracy and Technology commented on the original ordinances and stated that the data requested could be easily linked to a particular person because it includes the precise start and end times and locations of trips, tied to unique devices identifiers.<sup>92</sup> The Center for Democracy and Technology also pointed out that it was unclear how long the data would be retained, the specific purposes for which the data would be used, and how access and use would be limited for those purposes.<sup>93</sup> The Electronic Frontier Foundation and OTI also suggested that the MDS might violate California's Electronic Communications Privacy Act,<sup>94</sup> which established that "a government entity shall not . . . [c]ompel the production of or access to electronic device information from any person or entity other than the authorized possessor of the device."<sup>95</sup>

Addressing many of these concerns, LADOT updated its data management principles in April 2019 and established that the agency would mandate data sets solely to meet the specific operational and safety needs of LADOT objectives in furtherance of its responsibilities and protection of the public right-of-way.<sup>96</sup> It also established that law enforcement and other government agencies were not going to have access to raw trip data, and that only private contractors bound by contractual terms would have access to the data only for the purposes established by the agency.<sup>97</sup>

Nevertheless, during the summer of 2019, Uber and most scooter companies supported and lobbied for bill AB 1112, discussed in the California state legislature, that would have restricted local governments from collecting granular data from scooters and other dock-less services.<sup>98</sup> The bill included language that would prevent local governments from pursuing equity-enhancing goals through regulation, such as mandating shared, micro-mobility regulations requiring operation below cost and banning unduly restrictive, local, and dock-less mobility

<sup>91</sup> See Letter from Natasha Duarte, Policy Analyst, & Joseph Jerome, Policy Counsel, Ctr. for Democracy & Tech., to Seleta Reynolds, Gen. Manager, City of L.A. Dep't of Transp. (Nov. 29, 2018) [hereinafter Letter from Ctr. for Democracy & Tech. to LADOT], [https://cdt.org/wp-content/uploads/2018/11/CDT\\_LADOT\\_Dockless-Mobility-Comments.pdf](https://cdt.org/wp-content/uploads/2018/11/CDT_LADOT_Dockless-Mobility-Comments.pdf); Press Release, New Am., LA Department of Transportation Must Address Serious Privacy Threats Posed by Collection of Highly Detailed Scooter and Bike Location Data (Apr. 4, 2019), <https://www.newamerica.org/oti/press-releases/la-department-transportation-must-address-serious-privacy-threats-posed-collection-highly-detailed-scooter-and-bike-location-data/>.

<sup>92</sup> Letter from Ctr. for Democracy & Tech. to LADOT, *supra* note 91, at 3.

<sup>93</sup> *Id.* at 5–6.

<sup>94</sup> Letter from the Elec. Frontier Found. & the Open Tech. Inst. to Mike Bonin, Councilmember, L.A. City Council, & Seleta Reynolds, Gen. Manager, City of L.A. Dep't of Transp. 10–11 (Apr. 3, 2019), [https://newamericadotorg.s3.amazonaws.com/documents/EFF\\_OTI\\_Letter\\_re\\_LADOT\\_MDS\\_Privacy\\_Concerns\\_April\\_3\\_2019.pdf](https://newamericadotorg.s3.amazonaws.com/documents/EFF_OTI_Letter_re_LADOT_MDS_Privacy_Concerns_April_3_2019.pdf).

<sup>95</sup> CAL. PENAL CODE § 1546.1(a)(2) (West 2017).

<sup>96</sup> CITY OF L.A. DEP'T OF TRANSP., LADOT DATA PROTECTION PRINCIPLES 1–3 (Apr. 12, 2019), [https://ladot.lacity.org/sites/default/files/documents/2019-04-12\\_data-protection-principles.pdf](https://ladot.lacity.org/sites/default/files/documents/2019-04-12_data-protection-principles.pdf).

<sup>97</sup> *Id.* at 2.

<sup>98</sup> Janette Sadik-Khaan, Opinion, *Cities Need Scooter Data, and They Need to Keep It Safe*, BLOOMBERG (June 17, 2019, 7:30 AM), <https://www.bloomberg.com/opinion/articles/2019-06-17/uber-and-lyft-shouldn-t-hold-electric-scooter-data-hostage>; David Zipper, *The California Legislature Is Getting Played by Micromobility Companies*, BLOOMBERG (May 17, 2019, 1:24 PM), <https://www.citylab.com/perspective/2019/05/california-state-laws-shared-mobility-city-rules-ab-1112/589705/>.

product regulations.<sup>99</sup> It would have also preempted cities from establishing caps on the total number of e-scooters and bikes from using their regulatory powers.<sup>100</sup> The bill, however, did not pass.<sup>101</sup>

In July 2019, Jump, who had received a temporary permit, notified LADOT that it would not provide the requested trip data and, instead, turned over data reports with a twenty-four-hour latency.<sup>102</sup> This, however, does not really support LADOT's intentions because part of the value of the unique standard is to aggregate the data and have a comprehensive vision of mobility in the city. Late in October 2019, LADOT notified Jump that it was not in compliance and was expected to come into compliance by October 29.<sup>103</sup> Jump did not comply and LADOT suspended its license.<sup>104</sup> Jump sued LADOT arguing that LADOT's MDS put its users and its own privacy at risk.<sup>105</sup> In May 2020, however, Jump withdrew the lawsuit when it was acquired by Lime Scooters. The American Civil Liberties Union filed a complaint on behalf of Jump's users also raising privacy concerns, which was still pending at the time of writing.<sup>106</sup>

### III. POLICY RECOMMENDATIONS FOR LOCAL GOVERNMENTS

Ultimately, the cases and best practices documents highlighted below pose the following question of institutional design: what does an institutional arrangement that takes into consideration the privacy and data-security interests of firms and users, but enables local governments to reap the benefits of more access to data look like? The preliminary answer, most likely, is that no one institution can do that alone. Rather, rules that create checks and balances need to be in place; social norms about how to handle and disclose what is done with this data need to be followed; and security infrastructures and security-enhancing techniques, perhaps like the ones suggested by the EFF, need to be adopted to guarantee the security of the data. This Article has been an effort to map some of the stakes and alternatives for creating such an institutional arrangement. In this Part, I offer some brief recommendations for local governments enacting data-sharing rules.

<sup>99</sup> Sadik-Khaan, *supra* note 98; Zipper, *supra* note 98.

<sup>100</sup> Zipper, *supra* note 98.

<sup>101</sup> Laura Bliss, *Uber's Beef with L.A. Is Bigger than Data*, BLOOMBERG (Oct. 29, 2019, 3:56 PM), <https://www.citylab.com/transportation/2019/10/uber-lawsuit-data-privacy-scooter-tracking-los-angeles/600985/>.

<sup>102</sup> Lekach, *supra* note 90.

<sup>103</sup> Joseph Cox, *Uber Says It Will Sue Los Angeles over Sharing Scooter Location Data*, VICE (Oct. 30, 2019, 10:37 AM), [https://www.vice.com/en\\_us/article/wjwyzn/uber-says-it-will-sue-los-angeles-over-sharing-scooter-location-data](https://www.vice.com/en_us/article/wjwyzn/uber-says-it-will-sue-los-angeles-over-sharing-scooter-location-data).

<sup>104</sup> Alfred Ng, *Uber in Talks with Los Angeles as Scooter Location Data Lawsuit Looms*, CNET (Oct. 30, 2019, 8:43 AM), <https://www.cnet.com/news/uber-in-talks-with-los-angeles-as-scooter-location-data-lawsuit-looms/>.

<sup>105</sup> Beatriz Botero Arcila, *Jump v. Los Angeles: Removing Platforms Further from Democratic Control?*, 68 UCLA L. REV. DISCOURSE 160, 162, 166, 171 (2020) (arguing that a ruling recognizing that all of the data collected by platforms are their property, and that all data requests are searches, would further insulate platforms from democratic and regulatory control at a time when our era of informational capitalism is already characterized by remarkable platform power).

<sup>106</sup> See Complaint, *Sanchez v. L.A. Dep't of Transp.*, No. 2:20-CV-05044 (C.D. Cal. June 8, 2020).

### A. Clearly Define the Purpose of the Data-Sharing Program

Local governments should request information only to meet goals that would be very expensive or impossible to meet otherwise. If some of those goals can be met with less privacy-invasive mechanisms at a reasonable cost, those mechanisms should be preferred.

Data-sharing programs should also clearly define the purposes of data sharing and guarantee that the information shared is only used to advance those purposes. Some broad goals such as “planning local transportation,” may do, but the more specific they are, the more trust they may generate. The objectives should be related to advancing local welfare and should never be related to criminal law enforcement, as this would be in clear violation of users’ and firms’ Fourth Amendment rights.<sup>107</sup>

### B. Adopt a Data-Minimization Mindset

Local governments should strive to collect the least invasive amount or kind of data needed to meet their goals. This practice is known as data minimization,<sup>108</sup> and it refers to the fact that most of the decisions and policies enhanced by data-sharing discussed here also require deciding what needs to be measured and collected based on clearly identifying a particular program (such as congestion, work precarity, a housing crisis, etc.). Thus, beyond asking for too much data, local governments should focus on what data they need to meet their goals and how to collect it efficiently, while considering the privacy risks that arise. They must pay attention to “the difference between a lot of data and useful information.”<sup>109</sup>

For example, New York’s Transportation Network Company (TNC) only gathers trip information to the nearest intersection to the user. This has been good enough to meet the objectives of the agency while protecting user privacy.<sup>110</sup> On the other hand, Miami Beach does not collect user information and yet, if Airbnb complies and collaborates, perhaps its rules will be able to meet the objective of enforcing local short-term rental laws, as well.<sup>111</sup> The advantage of data minimization is that it raises far less personal privacy concerns.

<sup>107</sup> In *City of Los Angeles v. Patel*, the Court found that the ordinance was unreasonable, because of its goal and the risks it posed: the purpose of the search was not distinguishable from criminal control, and “a hotel owner who refuses to give an officer access to his or her registry can be arrested on the spot. . . . [T]he ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests.” 576 U.S. 409, 421 (2015).

<sup>108</sup> See Bernard Marr, *Why Data Minimization Is an Important Concept in the Age of Big Data*, FORBES (Mar. 16, 2016, 3:24 AM), <https://www.forbes.com/sites/bernardmarr/2016/03/16/why-data-minimization-is-an-important-concept-in-the-age-of-big-data/#34010ace1da4>.

<sup>109</sup> Zeynep Tufekci, *More Data Don’t Necessarily Help You Make Small Decisions*, SCI. AM. (Mar. 1, 2019), <https://www.scientificamerican.com/article/more-data-dont-necessarily-help-you-make-small-decisions/>.

<sup>110</sup> See N.Y.C. Taxi & Limousine Comm’n, *supra* note 66.

<sup>111</sup> See Taylor Dolven and Kyra Gurney, *Airbnb Sues Miami Beach over New Rules Requiring Rental Sites to Police Listings*, MIAMI HERALD (Jan. 4, 2019, 3:08 PM), <https://www.miamiherald.com/news/business/tourism-cruises/article223915280.html> (requiring adherence to geofencing policies but not collecting any data).



*C. Treat Shared Data as Personal Identifiable Information and as Confidential Information*

Following the NACTO recommendations, shared data should be treated as PII, meaning information that is linked or can be linked to a particular person.<sup>112</sup> The United States has enacted rules of behavior for handling PII. These rules include, for example, the type of background checks that employees or contractors accessing the information should go through.<sup>113</sup> Local governments should follow these or equivalent guidelines to guarantee that the information shared is kept and accessed in a secure manner. Finally, as is the case with PII, local governments should label, format, or request the data in such a way that if it cannot be traced back to, or reveal detailed information about, users and companies if it were made public under freedom of information laws and requests.

*D. Develop and Define Standards and Rules for Shared Data to be Secured, Only Accessible for the Purposes it was Collected, and Set Timelines and Limits for Identifiable Data Storage*

One of the main concerns raised by privacy advocates regarding the data-sharing rules was that the local governments had not established clear rules about who could access the data collected and for how long.<sup>114</sup> For example, privacy advocates are concerned that data may not only be collected to understand mobility patterns but be used by immigration policing agencies or police departments. The data that are obtained by local governments should only be used for the objectives it is collected for and should be withheld from local government departments that deal with particularly sensitive and potentially harmful issues, such as immigration policy or law enforcement. Local governments should thus enact binding data use ordinances that restrict how the information can be used. Additionally, to diminish the risks, local governments should set deadlines for how long it is sensible to keep information that can be traced back to people.

*E. Efficacy, Transparency, Publicity, and Accountability Mechanisms*

Finally, local governments should communicate and publicize the data-sharing rules they enact, the policies they develop, and the analytics they are performing on that shared data. To do so, they should open up spaces for discussion and participation. This will allow their citizens, civil society, and the companies themselves to understand and audit why the data is being shared and what is being done with it. Ultimately, the question is whether we trust institutions to have our data and use it. If local governments are accountable for their data-sharing policies

---

<sup>112</sup> NACTO REPORT 2019, *supra* note 57, at 5.

<sup>113</sup> See 2180.2 CIO GSA Rules of Behavior for Handling Personally Identifiable Information (PII), U.S. GEN. SERVS. ADMIN. (Oct. 8, 2019), [https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-\(pii\)-](https://www.gsa.gov/directive/gsa-rules-of-behavior-for-handling-personally-identifiable-information-(pii)-).

<sup>114</sup> See Jeschke, *supra* note 17; Lekach, *supra* note 90; Letter from Ctr. for Democracy & Tech. to LADOT, *supra* note 91, at 4.

and show their citizens that various data governance programs improve local governments and infrastructures, they will show themselves as trustworthy.

## CONCLUSION

This essay has offered some preliminary recommendations for local governments sharing data with privacy firms and has also suggested some preliminary avenues for legal reasoning to construe data as a public good. A last question might be why I have not suggested any legal reforms at the state or federal level.

Eventually, federal and state legislative action that creates privacy baselines, yet supports and does not hinder data-sharing between firms and local governments, will be ideal. However, I am wary that such legislative initiatives, as in the case of bill AB 1112 in California, would do the opposite at present: it would pose too strict of requirements or preempt local action, trumping the important efforts of local governments, such as proposing data-sharing requirements and advancing the understanding of this type of data as a public good. Similarly, overly restrictive interpretations of the Fourth Amendment, or strict formulations of privacy rights in the digital realm, could trump data-sharing rules enacted by local governments. In contrast, some of the reviewed cases, constant engagement and collaboration between civil society, local governments, and sharing firms progressively lead to ever-better standards for data sharing.

The type of data-sharing rules and programs presented in this piece are still a young phenomenon, and I see, with optimism, that the stronger local governments in the United States are trying to access some of the data these companies collect and turn it into a resource that helps them advance local wellbeing. To ensure these programs are more beneficial than harmful, however, they must be implemented with measures and criteria of the kind I have suggested here: they must request only the information they really need to meet a goal that would otherwise be too expensive or unrealistic to meet, the goal must be one that advances local wellbeing, the goal may not be related to criminal law enforcement, and there must be measures in place to ensure that the information will not be shared and used beyond the objective for which it was requested.